UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,611	09/25/2003	Timothy Siorek	02AB102 / ALBRP296US	6787

7590   10/26/2009

Susan M. Donahue
Rockwell Automation
704-P, IP Department
1201 South 2nd Street
Milwaukee, WI 53204

EXAMINER
JEAN GILLES, JUDE

ART UNIT	PAPER NUMBER
2443	

MAIL DATE	DELIVERY MODE
10/26/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/670,611	SIOREK ET AL.
	Examiner	Art Unit	
	JUDE J. JEAN GILLES	2443	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>09 October 2009</u>.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>19-21</u> is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) <u>19-21</u> is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All b)☐ Some * c)☐ None of:
    1.☐ Certified copies of the priority documents have been received.
    2.☐ Certified copies of the priority documents have been received in Application No. _____.
    3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.
4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

U.S. Patent and Trademark Office
PTOL-326 (Rev. 08-06)   **Office Action Summary**   Part of Paper No./Mail Date 20091025

DETAILED ACTION

This Office action is in reply to communication filed on 10/09/2009.

Allowable Subject Matter

1.   The indicated allowability of claims 19-21 is withdrawn in view of the newly

discovered reference to Callis et al. (U.S 6,963,917 B1), hereinafter Callis. Rejections

based on the newly cited reference follow.

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by
> another filed in the United States before the invention by the applicant for patent or (2) a patent
> granted on an application for patent by another filed in the United States before the invention by the
> applicant for patent, except that an international application filed under the treaty defined in section
> 351(a) shall have the effects for purposes of this subsection of an application filed in the United States
> only if the international application designated the United States and was published under Article 21(2)
> of such treaty in the English language.

3.   Claims 19-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Callis.

Callis teaches:

19. (Previously Presented) A method for allocating network traffic analysis tasks to

networked devices (figs. 4-6) comprising:

activating respective monitoring components embedded into network interface of a

plurality of devices of a network(col. 5, 10-30; col. 7, 24-34);

requesting resource utilization data from a subset of the activated monitoring

components (col. 5, 10-30; and col. 6, 8-24);

accepting resource utilization data from the subset of activated monitoring

components(col. 5, 30-55; col. 6, 8-51);

evaluating the resource utilization data (col. 5, 30-55; col. 6, 8-51);

determining which devices have greatest available resources based at least in part on

the

resource utilization data (col 6; 8-64); and

allocating network traffic analysis tasks based at least in part on the available resources

(col. 7, lines 44-59; fig. 6, 108, and 110).

20. (Previously Presented) A method for allocating network traffic analysis tasks to

networked devices (figs. 4-6) comprising:

activating a monitoring component embedded into network interface of more than one

device on a network (col. 5, 10-30; col. 7, 24-34);

requesting resource utilization data from each activated monitoring component(col. 5,

10-30; and col. 6, 8-24);

accepting resource utilization data from each activated monitoring component (col. 5,

30-55; col. 6, 8-51);

evaluating the resource utilization data (col. 5, 30-55; col. 6, 8-51);

determining which device has the greatest available resources based at least in part on
the

resource utilization data (col 6; 8-64); and

allocating the network traffic analysis tasks to the device with the greatest available

resources (col. 7, lines 44-59; fig. 6, 108, and 110).

21. (Presently Presented) A method for allocating network traffic analysis tasks to

networked devices (figs. 4-6) comprising:

activating a monitoring component embedded into network interface of more than one

device on a network (col. 5, 10-30; col. 7, 24-34);

requesting resource utilization data from each activated monitoring component (col. 5,

10-30; and col. 6, 8-24);

accepting resource utilization data from each activated monitoring component (col. 5,

30-55; col. 6, 8-51);

evaluating the resource utilization data (col. 5, 30-55; col. 6, 8-51);

determining the available resources for each device based at least in part on the

resource utilization data (col 6; 8-64);;

allocating the network traffic analysis debug task to the device with the greatest

available resources (col. 7, lines 44-59; fig. 6, 108, and 110; not tht executing and

running application includes tasks such as loading, debugging, compiling filtering

application) and

allocating the network traffic analysis control task to the device with second greatest

available resources (col. 7, lines 44-59; fig. 6, 108, and 110).

Conclusion

4.   ***This action is made Non-Final***. Any inquiry concerning this communication or

earlier communications from examiner should be directed to Jude Jean-Gilles whose

telephone number is (571) 272-3914. The examiner can normally be reached on

Monday-Thursday and every other Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Tonia Dollinger, can be reached on (571) 272-4170. The fax phone number

for the organization where this application or proceeding is assigned is (571) 273-3301.

Any inquiry of a general nature or relating to the status of this application or

proceeding should be directed to the receptionist whose telephone number is (571) 272-

0800.

/Jude J Jean-Gilles/

Primary Examiner, Art Unit 2443

JJG

October 25, 2009